

PTO: TASK COORDINATION: 173

Documentation related to why and how the type and placement of fence was decided by CBP under the Secure Fence Act of 2006, or any other fence constructed since 2006.

DRAFT RESPONSE:

The vast majority of fencing was not constructed under the Secure Fence Act of 2006 (SFA), but rather pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), as amended. 8 U.S.C. § 1103 note. There were two key provisions in the SFA. Section 2 of the SFA set out a requirement that DHS/CBP achieve and maintain operational control of the border. Public Law 109-367, § 3, 8 U.S.C. § 1701 note (Oct. 26, 2006). In Section 3 of the SFA, Congress amended Section 102(b) IIRIRA to require that the Secretary construct hundreds of miles of new fencing in specific location that were identified by Congress in the actual text of the statute. Public Law 109-367, § 3, 120 Stat. 2638 (Oct. 26, 2006). In 2007, however, Congress repealed Section 3 of the SFA. Congress replaced Section 3 of the SFA with the current language in Section 102 of IIRIRA, which directs the Secretary of Homeland Security (the "Secretary") to construct additional fencing and infrastructure on the southern border where it would be most practical and effective. Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). The full text of Section 102 of IIRIRA, which sets forth the Secretary's general authority to build fence and the waiver authority, is found at 8 U.S.C. § 1103 note.

Each segment of the border is unique. Numerous operational challenges exist for Border Patrol agents to gain access to patrol the border and provide border security. U.S. Customs and Border Protection (CBP) constructed border fencing in locations based on a risk and vulnerabilities assessment completed by the U.S. Border Patrol (USBP). The decision process is complex. The first consideration is the operational needs of law enforcement. Assessments by USBP – based on current and historic illegal crossing patterns and extensive field experience – have identified places along the border where physical fence construction would be most effective in providing persistent impedance. Many other factors are taken into account, such as terrain, floodplain, waterways, cultural sites, cost, migration patterns, and other important geographical and environmental concerns.

Four main factors contribute to final fence location decisions:

- Border Patrol operational assessments; where USBP identified critical, high-risk areas in dire need of the appropriate infrastructure to provide persistent impedance
- Constructability - engineering assessments, which include the cost to construct;
- Real estate and environmental considerations; and
- Stakeholder input.

These analyses yielded an overall assessment, and appropriate steps are taken to ensure these factors are incorporated into the final decision. Once fencing is chosen as a solution, the type of fence (pedestrian or vehicle, along with which design will be most effective) is determined. The purpose is to

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make informed decisions that provide agents with the right resources to effectively perform their priority homeland security mission, while taking into consideration the needs of those who live in border communities.

Please note that while tactical fencing provides a persistent method to impede illegal cross-border activity, it is not the only solution to mitigate capability gaps. Rather it is one element of a system making up the U.S. Border Patrol's multi layered approach to National Security. This system is inclusive of materiel solutions such as tactical infrastructure, fences and other physical barriers, tactical and permanent checkpoints, all-weather roads to gain border access, lighting and surveillance technology and staffing enhancements. These not only serve as force-multipliers, but also greatly enhance officer safety. Non-materiel solutions include training, common sense policy, and modifications to enforcement postures, which are all part of the full-spectrum requirement solutions. All efforts are geared towards attaining maximum situational awareness and operational efficiency while creating a safer environment for our agents.

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